

(2003) 09 CAL CK 0049

Calcutta High Court

Case No: C.R.R. No. 2981 of 2001

Veteran Company Pvt. Ltd. and
Another

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision: Sept. 16, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Negotiable Instruments Act, 1881 (NI) - Section 138, 141

Citation: (2004) 4 BC 544 : (2004) CriLJ 1258

Hon'ble Judges: Pradip Kumar Biswas, J

Bench: Single Bench

Advocate: Sudipta Moitra, Sukumar Bhattacharya, Subhasish Pachal and Amlan J. Sengupta, for the Appellant; Himangsu De and Debasish Roy, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Pradip Kumar Biswas, J.

This is an application u/s 482 of the Code of Criminal Procedure filed at the instance of M/s. Veteran Company Pvt. Ltd. and Anr., as petitioners seeking to quash the proceeding u/s 138 of N.I. Act initiated before the Court of the Ld. Judicial Magistrate, 1st Class, Tamluk alleging mainly that the case, as made out by the de facto complainant, is hit by the law of limitation as upon receipt of an Intimation from the concerned bank with regard to the bouncing of the cheque in question, the complainant issued notice to the petitioner on 22-6-2001 and the said notice was received by the said petitioner in June, 2001, but suppressing the material facts, the complainant has issued a second notice to save the law of limitation which is not permissible under the law and that though the complainant has initiated the instant criminal proceeding by impleading the company itself and the directors of the

company, yet, in the four corners of the petition of complaint, there is no clear averment for Invoking the provisions of Section 141 of the N.I. Act or in other words, it has not been quite clearly spelt out in the petition of complaint that the other persons impleaded in the petition of complaint were persons in charge of and/or responsible for the day to day affairs of the company in the matter of management and affairs of the company.

2. The present petitioners on receipt of the summons in the aforesaid case have approached this Court seeking to quash the aforesaid proceeding on the aforesaid premises.

3. This prayer, however, has been seriously opposed on behalf of the de facto complainant/opposite party alleging that whether or not earlier any notice was issued in connection with this case, being not an admitted fact, it should be left open to be decided in course of trial after taking evidence in connection with this case and since the question whether or not such notice was issued will certainly be a question of fact and that could only be decided during trial on merit after taking evidence.

4. It has further been contended on behalf of the opposite party that petitioner No. 2 has been described in the petition of complaint as director of the company itself and taking into consideration the above fact together with the averments made in Paragraph 2 as also in the Paragraph 5 of the complaint petition, it would be crystal clear that they were in charge and were responsible for the business of the company and as such quashing, as prayed for, is not permissible in the instant case.

5. Sri Moitra, Id. advocate appearing for the petitioner drawing my attention to a decision reported in [Sadanandan Bhadran Vs. Madhavan Sunil Kumar](#), has contended before me that although in the instant case, first notice was given on 22-6-2001 demanding the cheque amount and it was duly received by the petitioner during the same month, yet, suppressing the aforesaid fact, complainant again issued another notice for the second time on 18th August, 2001 to save the rigour of limitation.

6. In this connection, Sri Moitra has further contended that in the supplementary affidavit, his client has also annexed another notice dated 7th July, 2001 issued by the Id. advocate for the complainant admitting therein that similar notice of demand in terms of Section 138(2) of the N.I. Act was sent to the petitioner No. 2 on 22nd June, 2001 stating further that the cheque was earlier presented on 12-6-2001 which was dishonoured on 13 June, 2001 and thereafter notice was also issued on 22nd June 2001 and in this context, it has further been contended that since first notice dated 22nd June, 2001 was duly served upon Managing Director it does not lie in the mouth of the complainant to say that the first notice dated 22nd June, 2001 was not served upon the Director of the company and thereafter the complainant to avoid rigour of limitation has issued the second notice for the purpose of creating a fresh

cause of action according to his own suit will and in this connection, referring to the ratio of the decision in the [Sadanandan Bhadran Vs. Madhavan Sunil Kumar](#), it has been contended that in the instant case the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the first notice by the drawer, expires.

7. So, that being the position, pressing his claim on the basis of the second notice and filing of the complaint on 7th September, 2001 will be certainly hit by the law of limitation.

8. In opposing the aforesaid contention, it has been contended on behalf of the Opposite Party/de facto complainant that the complainant has not admitted the issuance of the first notice, rather by way of filing the affidavit-in-reply, it has been stated by the opposite party that he had never issued any notice as has been referred in Paragraphs 7 and 8 of the supplementary affidavit and in Paragraphs 8 and 9 of the affidavit-in-reply, it has been contended that the aforesaid fact had neither been stated in the main revisional application, nor during the course of hearing of revisional application before this Court and it is only at the time of filing of said supplementary affidavit such documents are forthcoming for which no reliance whatsoever should be placed on those documents.

9. I have given my anxious consideration with regard to submission made by the parties in this regard.

10. True it is that at the stage of disposing of the quashing matter, the Court is not normally entitled to embark upon any sort of enquiry, but here in this particular case, as I find that the present petitioner has taken up an issue by alleging that the complainant earlier issued first notice, yet, suppressing the aforesaid fact, they have issued second notice and on the basis of that they have filed this petition of complaint which according to settled norms is clearly barred by limitation.

11. The petitioner, herein, by filing the supplementary affidavit has annexed the aforesaid two notices and elaborated the issue by filing supplementary affidavit against which one affidavit-in-reply has been filed on behalf of the opposite party No. 2.

12. Perusing the aforesaid supplementary affidavit with the allegations contained therein and looking into the affidavit-in-reply against that I find that some sort of evasive denial has been made by the opposite party No. 2 in his affidavit-in-reply and in such a situation, the allegations contained in the supplementary affidavit regarding issuance of the first notice by the complainant itself would be taken as an admitted fact as per the ratio of the decision reported in [Badat and Co. Vs. East India Trading Co.](#), and relying upon the principles laid down in the aforesaid decision, I am constrained to hold that it has now become admitted position that the first notice was issued after the receipt of the information regarding bouncing of the

cheque and the complainant in the instant case, as it appears, has suppressed such material facts only with a view to save the rigour of limitation and that being the position as per the settled position of law, complaint, of the instant case, is hopelessly barred by limitation inasmuch as it offends the settled position of law i.e. the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer, expires.

13. In the decision reported in [Sadanandan Bhadran Vs. Madhavan Sunil Kumar](#), it has been held by the Apex Court that "having given our anxious consideration to this question, we are of the opinion that the above two provisions can be harmonised with the interpretation that on each presentation of the cheque and its dishonour a fresh right -- and not cause of action -- accrues in his favour. He may, therefore, without taking preemptory action in exercise of his such right under Clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. But, once he gives a notice under Clause (b) of Section 138 he forfeits such right, for, in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer, expires".

14. Applying the ratio of the aforesaid decision, in the background of the aforesaid admitted fact that the complainant issued first notice on 22nd June, 2001 which was received by the drawer in course of the same month, the filing of the complaint on the basis of such notice on 7th September, 2001, as has been done in this particular case would be certainly beyond the period of limitation as the period of one month for filing the complaint will be reckoned from the day on which period of 15 days from the date of the receipt of the first notice by the drawer expires.

15. That being the position, the instant complaint filed against the present petitioner is hopelessly barred by limitation.

16. Apart from the above objection, another objection was taken from the side of the petitioners alleging that in the four corners of the petition of complaint, no specific averment has been made by the complainant alleging that the present petitioners, specially the petitioner No. 2 was responsible for the management of the affairs of the company which according to them is a must as from perusal of Section 141 of N.I. Act it is evident that in a case where a company committed an offence u/s 138 of the N.I. Act then not only the company, but also every person who at the time when the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company shall be deemed to be guilty of the offence and liable to be prosecuted against and punished accordingly.

17. So, it has been submitted on behalf of the petitioners that on the above premises it is clear that the allegation made in the complaint do not either in express word or with reference to the allegations contained therein make out a case that at the time of commission of an offence, the present petitioners specially the petitioner No. 2 was in charge of and was responsible to the company for the conduct of its business and that being the position, as per the ratio of the decision reported therein in 2000 (Suppl.) (SC) 519 in the case of K.D.G. Nair v. Jindal Menthol India Ltd., this case cannot be proceeded with against petitioner No. 2 and in this connection, the petitioner has also placed his reliance on the decision reported in (2002) 1 Cal LJ 586 in the case of Karnataka Agro Chemicals v. Satyendra Nath Biswas.

18. Reliance has also been placed by the petitioner on the decision reported in [Smt. Katta Sujatha Vs. Fertilizers and Chem. Travancore Ltd. and Another](#), wherein it has also been held by the Apex Court that the "person in charge" must mean that the person should be in overall control of the day-to-day business of the company or firm. The person may be a party to the policy being followed by a company and, yet not be in charge of the business of the company or may be in charge of but not in overall charge or may be in charge of only some part of the business.

19. So, referring to the aforesaid decisions, it has been contended on behalf of the petitioners that since there is no clear averment in the petition of complaint against these petitioners, precisely against the petitioner No. 2 that he was in charge of and was responsible to the company for the conduct of the business of the company, the present case cannot be proceeded with against him in the light of those decisions and the law enunciated therein.

20. In opposing the aforesaid contention, it has been contended on behalf of the Opposite Party that from the recital of Paragraph 2 as also Paragraph 5 of the complaint petition, wherein petitioner No, 2 has been shown as director of the company, it will be crystal clear that petitioner No. 2 herein was certainly a person in charge or responsible to the company for the management of the day to day affairs of the company and in this connection they have placed their reliance on the decision reported in 1998 Cal Cri LR 287 in the case [Natasha Singh and Others Vs. Klen and Marshalls Manufactures and Exporters Pvt. Ltd.](#), the case of [Asith Kumar Mukherjee and Others Vs. T.T.K. Pharma Ltd. and Another](#), in the case of Asith Kr. Mukherjee v. T.T.K. Pharma Ltd., and with reference to the above, it has been contended from the side of the Opposite Party that from reading of the complaint petition it would clearly reveal that besides mentioning the position of the petitioner No. 2 in the company the wholesome allegation in the Complaint are sufficiently Indicative of the fact that the petitioner No. 2 was associated with the day to day management of the company and that being the position, quashing of the present complaint in so far as it relates to the present petitioner does not lie at all.

21. I have given my anxious consideration with regard to the submissions made by the parties and I have also gone through the decisions cited at the bar with meticulous care. Now, upon consideration of the fact situation of the present case and applying the ratio of the decision of the Apex Court reported in [Smt. Katta Sujatha Vs. Fertilizers and Chem. Travancore Ltd. and Another](#), and 2000 (Suppl.) 519 (Supra) which are authoritative Pronouncements covering the field itself, the decision reported in 1998 Cal Cri LR 287 (Supra), [Natasha Singh and Others Vs. Klen and Marshalls Manufactures and Exporters Pvt. Ltd.](#), and [Asith Kumar Mukherjee and Others Vs. T.T.K. Pharma Ltd. and Another](#), in my humble opinion, have no manner of application in the facts and circumstances of the present case and as such upon overall assessment of the materials available in the Instant case, I hold with certainty that the allegations contained in the petition of complaint against petitioner No. 2 are not sufficient enough to proceed u/s 138/141 of the N.I. Act.

22. Now, in view of what I have stated in the preceding paragraphs, I hold with certainty that this is a fit case where quashing of the aforesaid proceeding should be allowed. Consequently, the proceeding being case No. 1070-C/2001 u/s 138 of the N.I. Act pending before the Judicial Magistrate, 1st Class, Tamluk, Dist. Midnapore be quashed.

23. Xerox certified copy of this Judgment, if applied for, be given to the parties with utmost expedition.